

1 at 1). The instant federal habeas petition was mailed to the court or handed to a corrections officer for
2 mailing on August 30, 2012, well beyond the one-year time limitation contained in the statute.

3 Moreover, the court may take judicial notice of its docket and observes that petitioner initiated
4 a habeas petition before this court regarding the same judgment of conviction on May 25, 2009. *See*
5 *Provenzano v. Warden Palmer*, 2:09-cv-00973-KJD-RJJ. Even at that earlier date, the court issued an
6 order to show cause why that petition should not be dismissed as untimely (ECF #4), which resulted in
7 petitioner filing a notice of voluntary dismissal of the petition (ECF #5).

8 Petitioner may be entitled to equitable tolling of the one-year limitations period if he can
9 establish that he diligently pursued his right and some extraordinary circumstance stood in his way. *See*
10 *Calderon v. United States District Court (Beeler)*, 128 F.3d 1283, 1288 (9th Cir. 1997), *overruled in*
11 *part on other grounds, Calderon v. United States District Court (Kelly)*, 163 F.3d 530 (9th Cir. 1998);
12 *Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005). The petitioner will be given the opportunity to show
13 that either the instant petition was not filed beyond the one-year statute of limitations, or that he is
14 entitled to equitable tolling of the time limitation.

15 **IT IS THEREFORE ORDERED** that petitioner shall have **thirty (30) days** from the entry of
16 this order to show cause and file such proof he may have to demonstrate that the petition for writ of
17 habeas corpus was timely filed within the one-year time limitation or that he is entitled to equitable tolling
18 of the time period.

19 **IT IS FURTHER ORDERED** that if petitioner is unable to demonstrate that the petition for writ
20 of habeas corpus was filed within the limitations period, the court will enter an order dismissing the
21 petition.

22 DATED this 8th day of November, 2012.



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25 LARRY R. HICKS
26 UNITED STATES DISTRICT JUDGE
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